

Exhibit No.
Issue: Issue 2 Dark Fiber
Witness: Deborah Fuentes Niziolek
Type of Exhibit: Direct Testimony
Sponsoring Party: Southwestern Bell
Telephone Company, d/b/a
AT&T Missouri
Case No.: IO-2011-0057

SOUTHWESTERN BELL TELEPHONE COMPANY,
D/B/A AT&T MISSOURI

Case No. IO-2011-0057

REBUTTAL TESTIMONY

OF

DEBORAH FUENTES NIZIOLEK

Chicago, Illinois
October 4, 2010

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

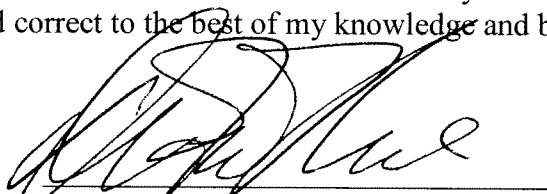
Southwestern Bell Telephone Company d/b/a)
AT&T Missouri's Petition for Compulsory)
Arbitration of Unresolved Issues for an) File No. IO-2011-0057
Interconnection Agreement with Global Crossing)
Local Services, Inc. and Global Crossing)
Telemanagement, Inc.)

AFFIDAVIT OF DEBORAH FUENTES NIZIOLEK

STATE OF ILLINOIS)
) SS
CITY OF CHICAGO)

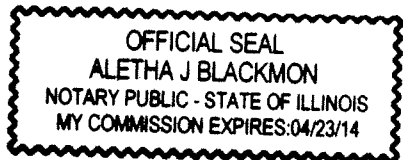
I, Deborah Fuentes Niziolek, of lawful age, being duly sworn, depose and state:

1. My name is Deborah Fuentes Niziolek. I am presently Associate Director, Wholesale Services.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.



Deborah Fuentes Niziolek

Subscribed and sworn to before me this 4th day of October, 2010





Notary Public

My Commission Expires: 4-23-14

1 **Q. ARE YOU THE SAME DEBORAH FUENTES NIZIOLEK WHO**
2 **SUBMITTED DIRECT TESTIMONY IN THIS MATTER ON**
3 **SEPTEMBER 29, 2010?**

4 **A.** Yes, I am.

5 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

6 **A.** In my Direct Testimony, I addressed Issue No. 2. Global Crossing's witness,
7 Mickey Henry, also addressed this issue in his Direct Testimony; I am responding
8 to that testimony.

9 **Q. PLEASE RECAP ISSUE NO. 2.**

10 **A.** Issue 2 comprises two sub-issues. The first concerns language, proposed by
11 AT&T Missouri and opposed by Global Crossing, that would limit Global
12 Crossing to 25% of AT&T Missouri's spare dedicated transport dark fiber, in any
13 given segment, during any two-year period. The second concerns language,
14 proposed by AT&T Missouri and opposed by Global Crossing, that would allow
15 AT&T Missouri to revoke Global Crossing's access to dark fiber it has leased if it
16 does not use the fiber within 12 months from the date AT&T Missouri provided it
17 the fiber. My Direct Testimony explained why both limitations are reasonable,¹
18 that the FCC has found such limitations reasonable,² and that other state
19 commissions (including this Commission) have also approved them.³

¹ Direct Testimony of Deborah Fuentes Niziolek, pages 4-5, 8-10,

² *Id.*, pages 5-6, 10.

³ *Id.*, pages 6-8, 11. The Direct Testimony of Mr. Richard Hatch also identified specific Commission-approved interconnection agreements between AT&T Missouri and various Missouri CLECs containing such limitations. *See*, Direct Testimony of Richard Hatch, pages 4, n.1, and 5, n. 2.

1 **Q. WHAT DOES MR. HENRY SAY ABOUT ISSUE NO. 2?**

2 A. He states that the FCC's rules do not provide for the limitations AT&T Missouri
3 proposes. He also states that Global Crossing is opposed to the limitations
4 because when Global Crossing leases dark fiber from AT&T Missouri, it pays the
5 Commission-approved rate, and as long as AT&T Missouri is appropriately
6 compensated for the use of its dark fiber, AT&T Missouri should not be permitted
7 to limit the amount of dark fiber Global Crossing leases, or to reclaim dark fiber
8 that Global Crossing leases but does not use.

9 **Q. IS MR. HENRY CORRECT THAT THE FCC'S RULES DO NOT**
10 **PROVIDE FOR THE LIMITATIONS AT&T MISSOURI IS PROPOSING?**

11 A. It is true that the FCC's rules do not *explicitly* refer to the 25% limitation or the
12 revocation right that AT&T Missouri is proposing. However, FCC Rule 307(a)
13 provides:

14 An incumbent LEC shall provide, to a requesting telecommunications
15 carrier for the provision of a telecommunications service,
16 *nondiscriminatory* access to network elements on an unbundled basis
17 at any technically feasible point *on terms and conditions that are just,*
18 *reasonable, and nondiscriminatory* in accordance with the terms and
19 conditions of any agreement, the requirements of sections 251 and
20 252 of the Act, and the Commission's rules.⁴

⁴ 47 C.F.R. § 51.307(a).

1 The 25% modification and the revocation right at issue here are reasonable and
2 nondiscriminatory terms and conditions, as the FCC in effect found in its *UNE*
3 *Remand Order*.⁵ Thus, while it is true that the FCC's rules do not explicitly
4 mention the limitations AT&T Missouri is proposing here, the FCC's rules do
5 require just, reasonable and nondiscriminatory terms and conditions for access to
6 UNEs, including dark fiber, and the FCC has found reasonable limitations just
7 like those AT&T Missouri is proposing here. I will return in a moment to the
8 nondiscriminatory aspect of the limitations.

9 **Q. MR. HENRY ASSERTS THAT AS LONG AS GLOBAL CROSSING IS**
10 **PAYING AT&T MISSOURI THE COMMISSION APPROVED RATE TO**
11 **LEASE THE DARK FIBER, AT&T MISSOURI SHOULD NOT BE**
12 **ALLOWED TO LIMIT THE AMOUNT OF FIBER GLOBAL CROSSING**
13 **CAN LEASE, OR TO REVOKE DARK FIBER THAT GLOBAL**
14 **CROSSING IS LEASING BUT NOT USING. HOW DO YOU RESPOND?**

15 A. That point might make sense if Global Crossing were the only
16 telecommunications carrier in Missouri, but it is not. Other competing carriers, as
17 well as AT&T Missouri itself, need access to AT&T Missouri's spare dark fiber,
18 which is a limited resource. As I explained in my Direct Testimony, and as the
19 FCC has indicated, the 25% limitation and the revocation right are reasonable
20 means to ensure that as many carriers as possible have access to this resource.

21 **Q. YOU STATED THAT YOU WOULD RETURN TO THE REQUIREMENT**
22 **IN FCC RULE 307 THAT TERMS AND CONDITIONS FOR ACCESS TO**

⁵ Direct Testimony of Deborah Fuentes Niziolek, pages 7, 12.

1 **UNBUNDLED NETWORK ELEMENTS MUST BE**
2 **NONDISCRIMINATORY. HOW DOES THAT APPLY HERE?**

3 A. The language that AT&T Missouri is proposing for Sections 10.4.3 and 10.7.2 of
4 Attachment 13 – the 25% limitation and the revocation right – is standard
5 language in AT&T Missouri interconnection agreements. AT&T Missouri does
6 its best to ensure that such language appears in all of its interconnection
7 agreements. I have not been able to review every Missouri interconnection
8 agreement, and so cannot testify that every one includes this language, but I have
9 reviewed several, and every one I reviewed includes the following language:⁶

10 Spare Fiber Inventory Availability and Condition

11
12 All available spare dark fiber will be provided as is. No conditioning
13 will be offered. Spare dark fiber is fiber that is spliced in all
14 segments, point to point but not assigned, and spare dark fiber does
15 not include maintenance spares, fibers set aside and documented for
16 SBC MISSOURI’ forecasted growth, defective fibers, or assigned
17 fibers. CLEC will not obtain any more than 25% of the spare dark
18 fiber contained in the requested segment, during any two-year period.
19 *(emphasis added)*

20
21 Every Missouri ICA I reviewed also includes the following Right of Revocation
22 of Access to Dedicated Transport Dark Fiber language⁷:

23 Should CLEC not utilize the fiber strand(s) subscribed to within the
24 12-month period following the date SBC MISSOURI provided the
25 fiber(s), SBC MISSOURI may revoke CLEC’s access to the
26 dedicated transport dark fiber and recover those fiber facilities and
27 return them to SBC MISSOURI inventory.

⁶ The agreements I reviewed, are the current interconnection agreements between AT&T Missouri and 1) NuVox Communications of Missouri, 2) Big River Telephone Co., 3) XO Communications Services, Inc., and 4) Socket Telecom.

⁷ *Id.*

1 Global Crossing is a beneficiary of the 25% limitation and the revocation right
2 that appear in the other Missouri interconnection agreements, because those
3 provisions ensure that other carriers cannot monopolize AT&T Missouri's dark
4 fiber, or hold onto it indefinitely. It is only fair that Global Crossing be subject to
5 the same restrictions. Moreover, the omission of AT&T Missouri's proposed
6 language from the Global Crossing ICA would be discriminatory vis-a-vis all
7 those other carriers that have the language in their agreements.

8 **Q. ON THE REVOCATION POINT, MR. HENRY STATES (AT P. 4, LINES**
9 **10-11) THAT HE CANNOT IMAGINE GLOBAL CROSSING LEASING**
10 **DARK FIBER THAT IT DOES NOT INTEND TO USE. HOW DO YOU**
11 **RESPOND?**

12 A. I take Mr. Henry at his word, but that is not a valid reason to reject AT&T
13 Missouri's language. If Global Crossing makes use of all the dark fiber it leases,
14 as Mr. Henry suggests it will, then AT&T Missouri will never have occasion to
15 revoke Global Crossing's access to the fiber. AT&T Missouri's right to revoke
16 dark fiber access comes into play only when a carrier leases dark fiber for a full
17 year and makes no use of it.

18 **Q. WHAT IS YOUR CONCLUSION ON ISSUE NO. 2?**

19 A. AT&T Missouri's proposed language appropriately ensures that all requesting
20 carriers will, to the extent practicable, have access to AT&T Missouri's limited
21 reserves of spare dark fiber. The language is reasonable and non-discriminatory,
22 in keeping with FCC Rule 307(a), and the 25% limitation and right of revocation

1 have been recognized as reasonable by the FCC. Global Crossing's position on
2 this issue is anti-competitive and discriminatory.

3 In addition, as I stated in my Direct Testimony, this Commission previously heard
4 both of these issues. Regarding the first, the Commission proceeded to adopt
5 AT&T Missouri's virtually identical contract language (over that offered by a
6 Coalition of CLECs), and that language contained a clear 25% limitation ("CLEC
7 will not obtain any more than 25% of the spare dark fiber contained in the
8 requested segment, during any two-year period").⁸ Regarding the second, since
9 the CLECs did not contest contract language virtually identical to that offered by
10 AT&T Missouri here ("Should CLEC not utilize the fiber strand(s) subscribed to
11 within the twelve (12) month period following the date SBC Missouri provided
12 the fiber(s), SBC Missouri may revoke CLEC's access to dark fiber and recover
13 those fiber facilities and return them to SBC Missouri inventory.")⁹ it was also
14 included within CLECs' ICAs.

15 For all of these reasons, the Commission should approve AT&T Missouri's
16 proposed language for Sections 10.4.3 and 10.7.2 of Attachment 13.

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 **A** Yes.

⁸ Direct Testimony of Deborah Fuentes Niziolek, page 10.

⁹ Direct Testimony of Deborah Fuentes Niziolek, page 13.